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Title of Document: Alochol and Drug Testing for Employees with Commercial Driver License and Ssfety Sensitive Employees

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Applicability: Regional Facilities and Regional Offices

I. GENERAL PURPOSE

The purpose of this policy is to provide notice to safety sensitive employees that the SC Department of Disabilities and Special Needs will test for drug and/or alcohol as stated in this directive. Random drug and/or alcohol testing shall be performed on all employees who have a commercial driver's licenses (CDL) or other employees considered safety sensitive employees. DDSN complies with the Drug-Free Workplace Act of 1988; the Omnibus Transportation Employee Testing Act of 1991; and Article 5.0 of South Carolina Transportation Regulation 43-80. Also the South Carolina Department of Disabilities and Special Needs complies with applicable requirements of Americans with Disabilities Act and the Family Medical Leave Act.

II. POLICY STATEMENT

It is the policy of DDSN that the safe maintenance of the DDSN vehicle system and the individuals we transport is of critical importance and justifies the existence of a drug and alcohol free work environment with the use of a reasonable drug and alcohol testing program. Therefore to ensure that no vehicle operator is affected by the use of alcohol and/or drugs, this agency is implementing a drug and alcohol testing program for all safety-sensitive positions to detect prohibited drug and alcohol use by employees.

III. DEFINITIONS

- A. DOT:** The United State Department of Transportation.
- B. DDSN:** Department of Disabilities and Special Needs
- C. ALCOHOL USE:** The consumption of any beverage, mixture or preparation containing alcohol including, but not limited to, medications.
- D. ALCOHOL TEST:** A test administered by a breath alcohol technician (BAT) on the breath specimen of an employee using a breath testing device (EBT) and any

other test conducted as on scene post accident testing by federal, state, or local law enforcement officials.

- E. DRUG:** Any prescription or controlled substance without verification of a valid prescription and/or the excessive use of over-the-counter (OTC) therapeutic drugs.
- F. DRUG TEST:** The compulsory production and submission of urine by an employee or prospective employee in accordance with agency procedures for comprehensive testing for substances including but not limited to marijuana, cocaine, opiates, amphetamines, and/or phencyclidine. Specimens will also be analyzed for such other substances as DOT may direct, or as may otherwise be required by federal or state law. In the event that DOT expands the list of drugs for which testing is required, DDSN may begin testing immediately for those drugs without prior notice to employees or applicants, unless notice is required by DOT or other applicable law.
- G. EMPLOYEE:** For the purpose of this policy, employee means anyone that is actively working or contracted in a temporary, permanent, probationary and/or part-time position and is required to have a CDL license to perform their job, or is considered as performing a safety-sensitivity position.
- H. SAFETY SENSITIVE:** To drive, inspect, service, or condition commercial motor vehicle equipment and/or to supervise and/or support personnel engaged in such activities.
- I. MEDICAL REVIEW OFFICER (MRO):** A person who is a licensed physician knowledgeable of substance abuse disorders and trained to interpret and evaluate drug and alcohol tests. DDSN will use the State Contract Vendor for making evaluations.
- J. REASONABLE SUSPICION:** The quantity of proof or evidence that is more than a hunch, but less than probable cause. Reasonable suspicion must be based on specific, objective facts and any rationally derived conclusion from those facts about the conduct of an individual that would lead the reasonable person to suspect that an individual is using or under the influence of drugs and/or alcohol while on duty.
- K. ON DUTY:** Includes but is not limited to any time work is performed on or in a DDSN vehicle or any other vehicle being used for DDSN business on or off DDSN premises including meals or break times.
- L. REFUSAL TO TEST:** Failure to provide an adequate urine specimen for drug test without a valid medical explanation; failure to provide adequate breath for an alcohol test without a valid medical explanation; failure to submit to either test as directed; engaging in any conduct which clearly obstructs the testing process.

- M. CHAIN OF CUSTODY:** The method used to control documentation and the privacy of an employee who is being tested for drug or alcohol.

IV. PROHIBITED ACTIVITY

The following prohibitions will apply to all employees as defined by this policy: This will include new applicants, temporary positions, probationary and regular employees, while on and/or off duty. Employees found taking part in any of the activities list will be subject to disciplinary action in accordance with DDSN Disciplinary Policy.

1. No employee shall ingest any controlled or other dangerous substance, unless as prescribed by licensed medical practitioner. Employees shall notify their immediate supervisor by way of written notice when required to use prescription medicine or over-the-counter medications that have the potential to impair job performance. The employee shall advise the supervisor of the known side effects of such medication, and the prescribed period of use. An employee may be temporarily reassigned to other duties or may be placed on sick leave while on prescribed medication, if no other duty is available.
2. No employee shall buy, sell or solicit to buy or sell, transport or possess illegal drugs or alcohol while on duty and/or conducting DDSN business on or off DDSN premises.
3. No employee shall use, possess or be under the influence of alcohol at any time while on duty and/or conducting DDSN business (Including medications containing alcohol except where medically valid).
4. No employee shall use or be under the influence of illegal drugs while on duty or conducting DDSN business.
5. No employee shall illegally possess, ingest or be under the influence of any controlled substance.
6. No employee shall perform a safety-sensitive function within four (4) hours of ingesting alcohol, including but not limited to driving a DDSN vehicle and/or school bus.
7. No employee shall test positive for drugs and/or alcohol unless medically approved.
8. No employee shall refuse to be tested for drugs and/or alcohol as defined by this policy.
9. No employee shall fail to communicate with DDSN and or the Medical Review Officer while awaiting the results of a drug test.

10. No employee shall violate applicable federal, state and/or local laws governing the use of drugs and/or alcohol.
11. No employee shall be convicted by the judicial system of a felony for a drug and/or alcohol related matter.

V. EMPLOYEE INTERVENTION PROGRAM

This program is available to assist employees with personal problems that may affect their job responsibilities including but not limited to the treatment of alcohol and/or drug addiction. DDSN supports the Employee Intervention Program sponsored by the South Carolina Vocational Rehabilitation Department.

If an employee or member of their immediate family desires the services of the Employee Intervention Program, they may call DDSN Office of Human Resources or call the local County Vocational Rehabilitation Employee Intervention Center. All request for assistance will be confidential and participation is voluntary and does not affect employment status.

VI. REQUIRED TESTING.

Drug and/or alcohol testing shall be conducted on employees under the following circumstances.

1. Pre-employment Applicant Testing (Drug Testing Only).
2. Employee Random Testing
3. Post Accident Testing
4. Return to Duty (Alcohol Only)
5. Follow-up Testing (Alcohol Only)

To ensure the integrity and accuracy of each test, all specimen collection, analysis, and laboratory procedures shall be conducted in accordance with DOT's procedural protocols and the safeguards set forth in Part 40 of title 49 of the Federal Code of Regulations.

Employees will be permitted to give a urine specimen in privacy and without being observed by collection site personnel. However, this right may be forfeited if there is a reason to believe that an employee may alter or substitute a specimen.

Before being tested for drugs, an employee will have an opportunity to list on their copy of the chain-of-custody form, any prescription and non-prescription medications they are lawfully using at the time. A "positive" drug test may be declared "negative" by the Medical Review Officer if the employee can provide adequate justification that the drug was prescribed by a licensed physician.

A confirmed positive result of any drug test without a legitimate medical explanation shall result in disciplinary action up to and including dismissal. Nothing in this policy limits the discretion of DDSN to terminate any employee found to be abusing drugs.

Terminated employees will not be afforded assistance from the Employee Intervention Program.

VII. PRE-EMPLOYMENT APPLICANT TESTING

All applicants covered by this policy shall be required to take a drug test as a condition of employment during the pre-employment screening process. An applicant shall be disqualified from further consideration for employment for the following reasons:

1. Refusal to submit to a required drug test; or
2. A confirmed positive drug test indicating drug use prohibited by this policy.

Any current DSN employee who moves by way of promotion, demotion, reclassification, transfer or reassignment from a position where testing was not required to a position considered safety sensitive, may be subject to pre-employment testing prior to the move taking place.

VIII. EMPLOYEE RANDOM TESTING

Employees as defined by this policy shall be randomly tested as condition of continued employment in order to ensure a drug free work environment. Employees shall be tested on an unannounced random basis. Every employee will have an equal chance of being selected each and every time the process is implemented.

An individual selected for random testing, and the individual's first line supervisor shall be notified the same day the test is scheduled, preferably within two hours of scheduled testing. The supervisor shall explain to the employee that the employee is under no suspicion of taking drugs and that the employees name was selected randomly.

SELECTION PROCESS

1. The selection process and testing will be managed by a third party medical facility and will not involve DSN employees. Appropriate safeguards shall be taken to ensure that the identity of the employee cannot be determined prior to or at the time of selection.
2. When an employee is randomly selected he/she shall be notified of this in writing and instructed to report to the collection site within two hours of notification.
3. Any employee who tests positive, or refuses to submit to a drug or alcohol test, may be suspended immediately and determined to be unavailable for work and could be subject to further disciplinary action up to and including dismissal.
4. Unjustified failure to appear for testing or refusal to provide a specimen shall be considered failure to follow a direct order and grounds for disciplinary action up to and including dismissal.

DEFERRAL OF TESTING

An employee selected for random drug testing may obtain a deferral of testing if the employee's first line and second-line supervisor concur that a compelling need necessitates a deferral on the grounds that the employee is:

1. In leave status as described on official DSN Leave Request; or
2. In official travel status away from the test site or is about to embark on official travel scheduled prior to testing notification.

An employee whose random drug test is deferred will be subject to an unannounced test within the following 30 days.

TESTING PROCEDURES

General

The initial test performed by the State contract laboratory will be a sensitive and rapid screening to eliminate "true negative" specimens from further consideration. For specimens initially testing positive, a second analytical procedure will be employed to identify the presence of a specific drug or metabolite

In order to ensure the full reliability and accuracy of drug tests, the accurate reporting of test results, and the integrity and effectiveness of the DDSN drug testing program, the State Director may make changes to this policy and these testing procedures to reflect improvements in the available science and technology. Failure to make such changes to the policy before the actual use of an improved drug test shall in no way invalidate the use of the improved test or its results.

General Testing and Specimen Collection Procedures

1. Procedures for collecting urine specimens shall allow individual privacy unless the collection personnel have reason to believe the individual may alter or substitute the specimen to be provided. Collection personnel may have reason to believe that a particular individual may alter or substitute the specimen when:
 - ⇒ The individual is being tested under the reasonable suspicion provisions of this policy;
 - ⇒ Facts and circumstances suggest that the individual is an illegal drug user;
 - ⇒ Facts and circumstances suggest that the individual is under the influence of drugs and or alcohol at the time of the test;
 - ⇒ The individual has previously tested positive;

- ⇒ Facts and circumstances suggest that the individual has equipment or implements capable of tampering or altering urine samples; or
 - ⇒ The individual has previously tampered with a sample.
2. Collection personnel shall require positive photo identification from each employee to be tested before entering the testing area. Also the collection personnel will require each employee to complete a form documenting any prescription medications or over the counter medications currently being used by the employee or which the employee has ingested in the last thirty days. This information must be provided by the employee prior to the production of the sample for testing.
 3. The bathroom facility of the testing area shall be private and secure containing no other source of water other than the toilet in the enclosure where urination occurs.
 4. The collection personnel shall require the employee to remove any bulky or unnecessary clothing prior to entering the bathroom facility. No purses or briefcases shall be allowed in the collection area.
 5. Both the tested employee and collection personnel shall keep the specimen in view at all times prior to its being sealed and labeled. The collection personnel shall place securely on the bottle an identification label which contains the date, the individual's specimen number and any other identifying information provided or required. The employee shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from the employee. The sample shall be stored in a secure refrigerated atmosphere until delivery to the testing lab.
 6. Each step in the collection and processing of a urine specimen shall be documented to establish procedural integrity and chain of custody.
 7. Where the employee is unable or unwilling to give a specimen at the time of the drug test, testing personnel shall document the circumstances on the drug-test report form. The employee shall be permitted no more than three hours to give a sample on site. Reasonable amounts of water and/or other acceptable liquid may be given to an employee to encourage urination. Failure to submit a sample shall be considered a refusal to submit to a drug test.
 8. In the event an employee is unable to provide an adequate amount of breath for the alcohol test (after several attempts), the employee may be required to submit to an evaluation by a licensed medical physician at their own expense to determine whether a valid medical condition exists. If a valid medical condition exists, the employee will be deemed unavailable for work due to medical reasons. If it is determined that there is no valid medical condition, it shall be noted by testing personnel and reported to DSN as a failure to submit.

IX. RECORDS AND REPORTS

Confidentiality of Test Results

The results of an employees drug test may not be disclosed without prior written consent of the employee unless disclosure would be as follows:

1. To the Medical Review Officer;
2. To the EAP Administrator where the employee is receiving counseling or treatment or is otherwise participating;
3. To any supervisory or management official with the Department having authority to take disciplinary action against the employee;
4. Required by law or pursuant to a valid court order.

X. REASONABLE SUSPICION

An employee may be tested for drugs and/or alcohol when objective factors infer that his/her conduct would lead a reasonable person to suspect that he/she is or has been using drugs and/or alcohol while on duty. Such factors may include, but not be limited to, appearance, behavior, speech and/or body odor, and must be observed by at least two (2) DSN officials, one of which is the OD; the second being the employee's supervisor or other designated officials.

1. When an employee is notified that he/she is suspected of drug and/or alcohol use in violation of this policy, he/she must report to the test site within one hour for testing or face disciplinary action up to and including dismissal.
2. The employee shall be given the necessary documentation and driven to the test site by a DSN employee. Because the employee is being tested for reasonable suspicion and may possibly be under the influence, the employee shall not be allowed to operate a vehicle.
3. DSN reserves the right to take appropriate action if necessary to prevent an employee from driving a vehicle to the test site for reasonable suspicion testing, including but not limited to contacting law enforcement.
4. When an employee is transported to a test site under reasonable suspicion, and the result is positive, DDSN will attempt to make arrangements for transportation home after the test is completed, if the employee request. DDSN is not obligated to take the person home who tested positive.
5. If an employee is selected for reasonable suspicion testing, he/she may be considered unavailable for work and placed on immediate suspension without pay pending the outcome of the test. **If the test results are negative, the employee shall be reinstated for all applicable suspension time.**

6. If an employee tests positive for alcohol or drugs, he/she shall be subject to disciplinary action up to and including dismissal.
7. If an employee has a reasonable basis to believe that another employee is illegally using or in possession of alcohol, prescription or controlled substances, they are to report the facts and circumstances to their supervisor immediately. If the supervisor is under suspicion, then the employee is to contact the Facility OD or other designated employee.

XI. POST-ACCIDENT TESTING

An employee must submit to a post-accident drug and/or alcohol test under the following circumstances:

1. After an accident involving the death of a human being.
2. Upon being issued a citation for a moving violation after a collision.

An employee may be tested on the scene of an accident by a law enforcement officer. If a local law enforcement officer directs an employee to submit to a drug and/or alcohol test at the scene of an accident, it will be the responsibility of the employee to notify his/her supervisor or another DSN official immediately and provide the following information

- Name and badge number of the officer
- Jurisdiction (Federal, State, County, city, etc.)
- Telephone number of officer conducting the test.

If an employee is not tested on the scene by law enforcement officials, the employee must submit to a drug test no later than thirty-two (32) hours and/or alcohol test no later than eight (8) hours after the accident.

In the case where an employee is seriously injured and cannot provide a specimen at the time of the accident, he/she must provide the necessary authorization to release information needed to determine the existence of drugs and/or alcohol in his/her system.

XII. RETURN TO DUTY TESTING

If an employee is allowed to return to a safety-sensitive position following a verified positive alcohol result of 0.02 or greater, a refusal to submit to further testing, or after engaging in other alcohol related activity that violates the regulations, then he/she must be evaluated by a Substance Abuse Professional (SAP) and pass a return to duty test. All expenses incurred by the employee will be the responsibility of the employee.

Before the return to duty test is performed, the employee must be evaluated by a SAP to determine whether he/she has followed the recommendations for action as outlined by the SAP, including but not limited to participation in any rehabilitation program.

The return to duty test and SAP evaluation assures that an employee is:

1. Free of alcohol and/or prohibited drugs, and;
2. Able to return with undue concern about continued substance abuse.

The employee must have a verified negative alcohol test result of less than 0.02 before any attempt is made to return him/her to a safety sensitive position.

XIII. FOLLOW UP TESTING

Follow up alcohol testing is separate from and in addition to the regulated random testing program. Once allowed to return-to-duty, the employee shall be subject to unannounced follow-up alcohol testing for at least twelve (12), but no more than sixty (60) months. The frequency and duration of the follow up testing shall be recommended by the SAP. However, a minimum of six (6) tests must be performed during the first twelve months after the employee has returned to duty.

Employees subject to follow-up alcohol testing shall remain in the random pool even if it results in duplicate testing.

XIV. EMPLOYEE COMMUNICATION

An employee who may be suspended pending the results of a drug and/or alcohol test must provide DSN with a telephone number and address where they can be reached and must remain available for contact by the Medical Review Officer at all times.

XV. DRUG AND ALCOHOL EDUCATION PROGRAM

DDSN shall provide training and educational material to employees whose positions are covered by this policy. The content may include, but not be limited to:

- The effects of drugs and alcohol on an individual's health, work and personal life.
- The signs and symptoms of a drug and/or alcohol problem.
- The available methods of intervention when a problem does exist.

Employees engaging in any conduct that is prohibited by this policy shall be provided information concerning the resources available to evaluate and resolve a drug and/or alcohol problem including, but not limited to, the names, addresses, and telephone numbers for community substance abuse professionals, counselors and treatment programs.

All employees shall be required to sign the attached statement certifying that they have received a copy of the policy and have read or been briefed about the drug and alcohol testing program and understand its contents.

XVI. ADMINISTRATIVE REQUIREMENTS

Each Facility will appoint a coordinator for the drug and alcohol testing program. The coordinator will be responsible for:

1. Serving as the contact person for the testing contractor and the central office.
2. Notifying employees and supervisor of testing dates and location.
3. Maintain all records as directed by DOT. Records cannot be part of the employees personnel file. They must be maintained separate and under file security. All information in this file is strictly confidential.
4. Ensure safety sensitive employees attend the one day training session. This can be for all safety sensitive employees or staff development train the trainer.
5. Provide training to all holders of CDL licenses and those employees who are considered safety sensitive. Also provide training to all new employee about the drug and alcohol testing program.
6. Maintain updated listing of employees who are required to be tested. Notify contractor of new employees and those employees who are no longer employed by DDSN.

EMPLOYEE ACKNOWLEDGMENT OF CDL DRUG AND ALCOHOL TESTING POLICY

EMPLOYEE NAME: _____

SOCIAL SECURITY NUMBER: _____

REGION: _____

FACILITY: _____

DEPARTMENT: _____

My signature indicates that I have received a copy of this policy, read and/or been briefed by _____ and understand the S.C. Department of Disabilities and Special Needs Drug and Alcohol Testing Policy.

I understand that any violation of this policy will be grounds for immediate disciplinary action up to and including dismissal.

Employee Signature

Date

DDSN REPRESENTATIVE

DATE

Robert W. Barfield
Deputy State Director
Administration
(Originator)

Stanley J. Butkus, Ph.D.
State Director

(Approved)